

Appl. No. 09/773,334
Amd dated March 31, 2004
Reply to Office Action of December 31, 2003

REMARKS

This amendment is responsive to the Office Action dated December 31, 2003. The Applicant has amended claims 1, 7, 11, 15, 17 and 19, and added new claims 20-23. Claims 1-3, 6, 7, 9-11, and 14-23 are pending.

Applicant filed an Appeal Brief on October 23, 2003. In the Office Action dated December 13, 2003, the Examiner concluded: "In view of the appeal brief filed on October 23, 2003, prosecution is hereby reopened." Applicant was given the option to reply to the Office Action or to request reinstatement of the appeal. In the interest of advancing prosecution of this matter, Applicant responds to the Office Action dated December 31, 2003.

Claim Rejection Under 35 U.S.C. § 102

In the Office Action, the Examiner rejected claim 11 under 35 U.S.C. § 102(b) as being anticipated by Kissinger et al. (U.S. Pat. No. 5,816,256). Applicant respectfully traverses the rejection. For a claimed invention to be anticipated by a cited reference, the cited reference must disclose each and every element of the claimed invention. E.g., Trintec Indus. Inc. v. Top-U.S.A. Corp., 63 USPQ2d 1579, 1599 (Fed. Cir. 2002); Lewmar Marine, Inc. v. Barient, Inc., 3 USPQ2d 1766, 1767 (Fed. Cir. 1987). Kissinger et al. fail to disclose each and every feature of the invention as recited in claim 11, as amended, as required by 35 U.S.C. § 102(b), and provide no teaching that would have suggested the desirability of modification to include such features. Kissinger et al. fail to teach or suggest an apparatus comprising a housing sized to receive an animal and to confine the animal during therapeutic treatment, a drip bag support coupled to the housing, and a syringe cradle coupled to at least one of the housing and the drip bag support, as recited by Applicant's claim 11, as amended.

Applicant notes at the outset that claim 11 has been amended to recite a drip bag support. Kissinger et al. do not disclose a drip bag support, and this distinction sets the invention recited in claim 11 apart from Kissinger et al.

Although Kissinger et al. fail to teach or suggest an element of claim 11, as amended, Applicant addresses additional points raised by the Examiner in connection with claim 11. Applicant does so because there are alternate grounds for allowability of claim 11, and because

Appl. No. 09/773,334
Amd dated March 31, 2004
Reply to Office Action of December 31, 2003

the discussion of claim 11 is also pertinent to claims 2, 9, 10 and 14-19, which include some of the same issues.

In support of the rejection, the Examiner referred to FIG. 1 of Kissinger et al. The Examiner equated a cage or bowl 14 to a housing sized to receive an animal and a support table 36 to a fluid container support. As FIG. 1 clearly shows, however, the support table is not coupled to the cage or bowl, as recited in claim 11. The Examiner stated that the table 36 "is coupled to the housing 14 via leads and tubing which enter the animal and attach to the animal, which is coupled to the housing 14 via its feet or body at least."

Injection valve 46 is clearly not a drip bag, and therefore table 36 is not a "drip bag support" as recited in claim 11, as amended. But even if injection valve 46 were a "drip bag" and even if table 36 were a "drip bag support," Kissinger et al. do not disclose or suggest that the drip bag support is in any way "coupled to" cage or bowl 14. In particular, Kissinger et al. do not disclose or suggest that the animal is "coupled to" the cage or bowl in any way. On the contrary, Kissinger et al. explicitly and repeatedly describe the animal as "freely-moving." E.g., col. 1, lines 6-10; col. 5, lines. 24-26;). Kissinger et al. explicitly disclose, therefore, that the animal is not coupled to the cage or bowl. Therefore, the Examiner's assertion that Kissinger et al. "couple" the table to the bowl by way of the animal is not supported by Kissinger et al.

The Examiner suggested that the support table is coupled to the cage or bowl via the test leads. Kissinger et al., however, do not support the Examiner's suggestion. Kissinger et al. explicitly teach that the test the leads ordinarily do not interact with the cage or bowl at all, and that the bowl shown in FIG. 1 is shaped to prevent casual contact with the leads. Col. 8, lines 62-64.

Claim 11 further recites "a syringe cradle coupled to at least one of the housing and the drip bag support." Assuming for the sake of argument that the unidentified apparatus holding syringe pumps 40, 42 and 44 is a "syringe cradle," Kissinger et al. do not disclose or suggest that the syringe cradle is in any way "coupled to" cage or bowl 14 or to table 36.

Furthermore, to the extent the Examiner equates "coupled to" with "in contact with," the Examiner has adopted a definition of "coupled" that is inconsistent with the term's ordinary and customary meaning. The Examiner has not produced any evidence that supports a definition whereby an animal being in contact with a bowl is "coupled to" the bowl. The Examiner has not

Appl. No. 09/773,334
Amd dated March 31, 2004
Reply to Office Action of December 31, 2003

produced any evidence that supports a definition whereby a syringe cradle in contact with a table is "coupled to" the table.

Applicant's own application provides examples of elements "coupled to" other elements. In connection with the syringe cradle, Applicant's application discloses "Syringe cradle 34 may be coupled to post 32 in many ways, such as by screws, by bolts or by adhesives." Page 5, lines 13-14. Although "coupled to" is not limited to those particular coupling approaches, the approaches disclosed by the applicant are within the ordinary and customary meaning of "coupled to." There is nothing in Applicant's application that supports the unreasonable definition of "coupled to" that the Examiner has applied.

For purposes of the above argument, Applicant has assumed that table 36 could be fairly described as a "fluid container support" and that the unidentified apparatus holding syringe pumps 40, 42 and 44 could fairly be described as a "syringe cradle." This does not mean that Applicant agrees with the Examiner's identification of the Kissinger elements with the elements of claim 11, however. On the contrary, Applicants contend that Kissinger et al. do not disclose or suggest a "fluid container support" (and certainly do not disclose or suggest a "drip bag support") or a "syringe cradle." In particular, the element the Examiner identifies as a syringe cradle is not labeled in FIG. 1 and is not described by Kissinger et al. Its function is not disclosed, and may just as well be something other than a syringe cradle, such as an actuator or a power supply for syringe pumps 40, 42 and 44. The identification of the apparatus as a "syringe cradle" is a matter of the Examiner's speculation, and the Examiner's speculation is not evidence that can support a prima facie case.

Kissinger et al. fail to disclose each and every limitation set forth in claim 11. For at least these reasons, the Examiner has failed to establish a prima facie case for anticipation of Applicant's claim 11 under 35 U.S.C. § 102(b). Withdrawal of this rejection is requested.

Claim Rejection Under 35 U.S.C. § 103

In General

In the Office Action, the Examiner included a Response to Arguments which purported to address various issues.

Appl. No. 09/773,334
Amd dated March 31, 2004
Reply to Office Action of December 31, 2003

In the Response to Arguments, the Examiner stated that the alleged bases in the Examiner's analysis—allowing for easier handling and transportation, and keeping the syringe from moving about—are not found in the specification of Applicant's application, therefore cannot be considered hindsight. The Examiner invited Applicant to "point out the specific lines of the specification that the examiner found these features." The Examiner's invitation entirely misses the point. It is the Examiner's duty to set forth the evidentiary bases for his conclusions. It is not up to the Applicant to point out where the Examiner might have drawn supposed rationales.

Furthermore, the Examiner asserts "the applicant first called these 'features' or 'advantages' and therefore agrees that the examiner that has found a proper reason for making a combination." This is incorrect on many levels. First, Applicant does not agree that the Examiner has found any "proper reason," and never has so agreed. Second, Applicant has consistently urged the Examiner to base findings upon evidence. The Examiner's rationale, which is unsupported by evidence, is not "proper" in any sense.

The Examiner further discussed in the Response to Arguments whether Gullino et al. disclose a syringe. Applicant will address that issue below.

In short, the Examiner's Response to Arguments is not in response to Applicant's arguments at all. Applicant argued that the Examiner had no evidence, and the Response to Arguments includes none.

In this new round of examination, Applicant respectfully proposes to re-focus of the issues. The following four points are clearly established in the law.

a. Patentable Inventions Can Include Existing Features.

It is clear, beyond all doubt, that a patent may be issued for a new combination of existing elements. As the Federal Circuit recently said, and has said on many other occasions, inventions are typically new combinations of existing principles or features. Ruiz v. A.B. Chance Co., 69 USPQ2d 1686, 1690 (Fed. Cir. 2004).

Thus, it is clear that the Examiner cannot evaluate an invention feature-by-feature, and deny a patent on the grounds that each feature is known in the prior art. The Federal Circuit and

Appl. No. 09/773,334
Amd dated March 31, 2004
Reply to Office Action of December 31, 2003

section 103 specifically require consideration of the claimed invention "as a whole." Ruiz, 69 USPQ2d at 1690.

Moreover, the fact that a claimed invention is a fairly simple combination of elements is not a basis for denying a patent. "Simplicity is not inimical to patentability." In re Oetiker, 24 USPQ2d 1443, 1446 (Fed. Cir. 1992).

b. Section 103 Requires a Suggestion or Motivation to Combine.

When the Examiner finds references that disclose elements of the claimed invention, the Examiner cannot deny a patent unless there is a suggestion or motivation teachings of the prior art references. E.g., In re Dembiczak, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). There must be a showing that "an artisan of ordinary skill in the art at the time of the invention, confronted by the same problems as the inventor and with no knowledge of the claimed invention, would select the various elements from the prior art and combine them in the claimed manner." Ruiz, 69 USPQ2d at 1690.

c. The Suggestion or Motivation to Combine Must Be Supported by Evidence.

The Federal Circuit has made it very clear that any suggestion or motivation to combine must be supported by evidence. The Federal Circuit has also made it very clear that any suggestion or motivation to combine cannot be supported by the Examiner's conclusory statements.

In re Lee, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002) specifically says that a motivation or suggestion must be supported by objective evidence. In re Dembiczak, 50 USPQ2d at 1617, likewise stresses the importance of evidence.

What is evidence? "The examiner can satisfy the burden of showing obviousness of the combination 'only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.'" In re Lee, 61 USPQ2d at 1434 (quoting In re Fritch, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992)).

What is not evidence? Applicant's own disclosure is not evidence. "It is improper, in determining whether a person of ordinary skill would have been led to this combination of

Appl. No. 09/773,334
Amd dated March 31, 2004
Reply to Office Action of December 31, 2003

references, simply to use that which the inventor taught against the teacher.” In re Lee, 61 USPQ2d at 1434 (quotation and citation omitted).

What is else not evidence? An Examiner’s conclusory statements are not evidence. In re Lee, 61 USPQ2d at 1434 (“The examiner’s conclusory statements ... do not adequately address the issue of motivation to combine.”); In re Dembiczak, 50 USPQ2d at 1617 (“Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence.”). The factual question of motivation cannot be resolved based upon the Examiner’s subjective belief, or the Examiner’s reliance upon unknown authority. In re Lee, 61 USPQ2d at 1434.

What else is not evidence? An Examiner’s expertise is not evidence. “Common knowledge” and “common sense” are not evidence. In re Lee, 61 USPQ2d at 1435 (“‘Common knowledge and common sense,’ even if assumed to derive from the agency’s expertise, do not substitute for authority when the law requires authority.”).

Thus, it is insufficient for an Examiner to speculate about possible advantages that might come about if features from disparate devices were combined, and cite those possible advantages as a motivation to combine. The Examiner’s speculation is not evidence.

In the Response to Arguments, the Examiner asserted that his reasons were proper because they did not come from Applicant’s application. Even if the Examiner did not draw reasons from Applicant’s application, the reasons must still be supported by evidence. It is error for the Examiner to think up a conjectural suggestion or motivation on his own accord, and then deny Applicant a patent on that basis. The suggestions or motivations that the Examiner comes up with on his own are not evidence.

d. The Burden of Proof is on the Examiner.

It is well established that the obligation is on the Examiner to develop an evidentiary basis for his or her findings. In re Lee, 61 USPQ2d at 1434. Thus, when the Examiner fails to support a prima facie case, it is not up to Applicant to produce evidence to show that the patent should be issued. Rather, the burden is clearly on the Examiner to show why the patent should be denied.

Appl. No. 09/773,334
Amd dated March 31, 2004
Reply to Office Action of December 31, 2003

Claim 1

In the Office Action, the Examiner rejected claim 1 under 35 U.S.C. § 103(a) as being unpatentable over Gullino et al. (U.S. Pat. No. 3,897,751) in view of Kissinger et al. Applicant respectfully traverses the rejection. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

In support of the rejection, the Examiner stated that Gullino et al. disclose a housing with front, rear, bottom, and two side panels 14, and a fluid container support 34 coupled to the housing, and that the housing is sized to receive an animal. Applicant has amended claim 1 such that claim 1, as amended, is clearly distinguishable from Gullino et al. Claim 1, as amended, recites a "drip bag support." Water bottle 30 disclosed in Gullino et al. is a bottle, not a drip bag, and strap 34 supporting water bottle 30 would clearly not support a drip bag. Gullino et al. do not disclose or suggest a "drip bag support" as recited in amended claim 1.

Although Gullino et al. fail to teach or suggest an element of claim 1, as amended, Applicant addresses additional points raised by the Examiner in connection with claim 1. Applicant does so because there are alternate grounds for allowability of claim 1, and because the discussion of claim 1 is also pertinent to claims 2, 3, 6, 9, 10, 11, and 14-19, which include some of the same issues.

The Examiner asserted that infusion pump 31 is a syringe, but admitted that Gullino et al. fail to disclose a syringe cradle coupled to the housing or the fluid container support, as recited by Applicant's claim 1. The Examiner declared, however, that Kissinger et al. teach a syringe cradle used to hold syringes for the treatment of an animal and the infusion or injection of animals. Once again, the Examiner referred to FIG. 1 of Kissinger et al. The Examiner further asserted that Kissinger et al. show the syringe cradle coupled to the fluid container support and to the housing via the tubing going to the animal. The Examiner concluded that it would have been obvious to one of ordinary skill in the art to have applied the syringe cradle teachings of Kissinger et al. to the device described by Gullino et al. so as to hold the syringe stable and attach it to the other apparatus so as to allow for greater mobility and portability of the apparatus.

Appl. No. 09/773,334
Amd dated March 31, 2004
Reply to Office Action of December 31, 2003

The Examiner's analysis was in error. As noted above, there is no evidence—none—that Kissinger et al. disclose a syringe cradle. The element is so identified by the Examiner, not by Kissinger et al., and the Examiner's conclusion is not evidence.

Further, as noted above, there is no evidence—none—that the Kissinger element, whatever it is, is "coupled to" any fluid container support.

Also, the element identified by Gullino et al. reference number 31 is an infusion pump (Gullino, col. 3, lines 10-11), not a syringe. Applicant has already argued this point at length in her appellate brief, and stands by that argument here.

Assuming for the sake of argument that element 31 constitutes a "syringe," and assuming for the sake of argument that Kissinger et al. disclose a syringe cradle, the Examiner's rejection is still inappropriate. There is no evidence—none—of any motivation or suggestion for skilled in the art at the time of the invention to take a Kissinger feature and add it to a Gullino device.

First, there is no evidence—none—that one skilled in the art would have been motivated to add Kissinger features to a Gullino device. The Gullino device already has a fluid infusion device. Consequently, there is no reason one skilled in the art would have been motivated to add a redundant syringe assembly from Kissinger et al.

Second, there is no member disclosed in Gullino et al. that could mate with the Kissinger device, and placing the Kissinger device anywhere on the Gullino device would be completely superfluous. There is no evidence—none—that suggests that the Kissinger device would work with the Gullino device, or that the Kissinger device (whatever it is) would support or stabilize the Gullino infusion pump. If the two devices would not work together, it is absurd to suggest that one skilled in the art would have been motivated to combine them.

Third, there is no evidence that the Kissinger device is needed by the Gullino device. The Examiner suggested motivations to combine—which are not evidence—are greater mobility and portability of the apparatus, and less risk of unintentional removal. But there is no evidence—none—that greater mobility and portability is needed for the Gullino device, or that the Kissinger device could provide that greater mobility and portability. And there is no evidence—none—that there is any risk of risk of unintentional removal in the Gullino device, or that the Kissinger device could reduce that risk. In other words, the Examiner's purported bases for combining

Appl. No. 09/773,334
Amd dated March 31, 2004
Reply to Office Action of December 31, 2003

Kissinger features with Gullino features are exactly the kind of conclusory statements held to be insufficient in In re Lee, 61 USPQ2d at 1434-35.

The Examiner has failed to establish a prima facie case for non-patentability of Applicant's claim 1 under 35 U.S.C. § 103(a). Withdrawal of this rejection is requested.

The above analysis is also applicable to claims 2, 3 and 6, 16 and 17, which depend upon claim 1. The above analysis is further applicable to claims 9, 10, 11, 14, 15, 18 and 19 which recite elements "coupled to" the housing. For the same reasons, claims 2, 3, 6, 9, 10, 11, and 14-19 are allowable.

Top Panels Recited in Claims 2, 3, 7, 9, 10, 14, and 15

In the Office Action, the Examiner rejected claims 2, 3, 7, 9, 10, 14, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Gullino et al. (U.S. Pat. No. 3,897,751) in view of Kissinger et al. (U.S. Pat. No. 5,816,256), and further in view of Thrun (U.S. Pat. No. 6,349,675). In particular, the Examiner asserted that a Gullino device, even if modified to include a Kissinger device, does not include a first or a second top panel hingedly attached and coupled to the housing. The Examiner asserted, however, that Thrun discloses such panels. Applicant respectfully traverses the rejections.

Claim 7 is independent. Claims 2 and 3 depend upon claim 1, and claims 9 and 10 depend on claim 7, and claims 14 and 15 depend on claim 11. Applicant first addresses independent claim 7 and dependent claims 9 and 10.

a. Claims 7 and 9-10.

Independent claim 7, as amended, recites an apparatus comprising a housing sized to receive an animal and to confine the animal during therapeutic treatment. The housing defines a top opening. Independent claim 7 further recites a first top panel hingedly coupled to the housing and a second top panel hingedly coupled to the housing, the first and second top panels being selectively positionable to cover at least a portion of the top opening. Independent claim 7 further recites that when the first and second top panels are in a closed position, the top opening is at least in part uncovered.

The amendment to claim 7 renders moot the Examiner's basis for rejection of claims 7, 9 and 10. Thrun does not disclose or suggest doors that, when in a closed position, leave part of

Appl. No. 09/773,334
Amd dated March 31, 2004
Reply to Office Action of December 31, 2003

any top opening uncovered. On the contrary, Thrun expressly discloses that the Thrun device does not provide access to the enclosure when the doors are closed, the Thrun device does not provide open apertures through which very small animals (such as ferrets, hamsters, gerbils, snakes, chameleons, insects or arachnids) may escape, and that no top opening in the Thrun device is present when the doors are in the closed position. Col. 1, lines 52-55; col. 2, lines 14-17; col. 3, lines 53-58; col. 4, lines 5-6, 14-18; FIGS. 1, 3, 5, 6.

None of the other cited references disclose or suggest first and second top panels that, when in a closed position, leave part of any top opening uncovered.

Applicant wishes to have it noted, however, that Applicant does not agree with the Examiner's assertion of Thrun against claims 7, 9 and 10, nor does Applicant agree with the Examiner's interpretation of Thrun. The assertion of Thrun and the Examiner's interpretation of Thrun will be addressed below in connection with claims 2, 3, 14, and 15. In connection with the Examiner's rejection of claims 7, 9 and 10, however, the amendment to claim 7 clearly distinguishes the claimed invention from Thrun. Claims 7, 9 and 10 are therefore allowable.

Applicant further wishes to have it noted that claims 9 and 10 are also allowable for other reasons, discussed elsewhere in these Remarks.

b. Claims 2, 3, 14, and 15.

Claim 2, which depends upon independent claim 1, and claim 3, which depends upon claim 2, recite first and second top panels hingedly coupled to a housing. The housing defines a top opening and the first and second top panels are selectively positionable to cover at least a portion of the opening. Claim 14, which depends upon independent claim 11, recites a top panel hingedly coupled to a housing. Claim 15, which has been amended to depend on claim 14, recites that the housing defines a top opening, and further recites a second top panel, with the first and second top panels being configured to assume a closed position in which a portion of the top opening is covered, and further configured to cover less than one hundred percent of the top opening.

For reasons discussed elsewhere in these Remarks, independent claims 1 and 11 are allowable. Therefore, claims 2, 3, 14 and 15 are also allowable. Applicant contends, however,

Appl. No. 09/773,334
Amd dated March 31, 2004
Reply to Office Action of December 31, 2003

that claims 2, 3, 14 and 15 are allowable because the Examiner's reliance upon Thrun is inappropriate.

The Examiner's purported motivations adding a Thrun device to a Gullino device are unsupported by evidence. After asserting that Thrun discloses independently positionable top panels, the Examiner declared "it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of [Thrun] to the invention of [Gullino et al.] as modified by [Kissinger et al], as the purpose of the doors disclosed by [Thrun] is to allow access to the interior of the enclosure."

There is no evidence—none—supporting this alleged motivation. This is nothing more than a conclusory statement of the Examiner, and is legally insufficient under In re Lee, 61 USPQ2d at 1434-35.

Furthermore, the asserted motivation is not a motivation at all. Rather, it is a truism. To say that the purpose of doors is to allow access is not a motivation to add the doors; it is merely a recitation of a purpose of doors.

In the case of Applicants invention as recited in claims 2, 3, 14 and 15, the handler has access to the housing whether the top panels are present or not. The Examiner presented no evidence—none—that one skilled in the art would have been motivated to add top panels to allow access to a housing that already allows access. Unlike the Applicant's claimed device, which balances animal confinement with simultaneous access to the animal by the caregiver, Thrun does not accommodate such a balance. The Thrun doors allow access only when open, but the top panels on Applicant's claimed invention allow access even when closed.

The Examiner further declared "it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of [Thrun] to the invention of [Gullino et al.] as modified by [Kissinger et al.], in order to allow access to the interior of the enclosure without allowing a wide area to minimize the risk of lab equipment falling in on the animal and injuring it while the enclosure is open. This would also stop any other escaped animals from getting into the cage with the one being treated."

There is no evidence—none—supporting this alleged motivation. This is simply more conjecture by the Examiner, with no evidentiary support at all.

Appl. No. 09/773,334
Amd dated March 31, 2004
Reply to Office Action of December 31, 2003

None of the cited references mention or suggest any concern associated with falling lab equipment. None of the cited references mention or suggest any concern about preventing injury to the animal when top panels are open. None of the cited references mention or suggest any concern about "other escaped animals." None of the cited references mention or suggest any concern pertaining to animals getting into the housing along with the one being treated.

Applicant prefers not to repeat herself, but the point must be made. "Motivations" such as these, that exist in the imagination of the Examiner but that are not supported by the record, are legally insufficient. In re Lee, 61 USPQ2d at 1434-35. Applicant is entitled to a full and reasoned decision based upon evidence.

Furthermore, Applicant maintains that Thrun is not directed to the field of the Applicant's endeavor, nor is Thrun reasonably pertinent to the particular problem with which the Applicant was concerned. One interested in an animal confinement apparatus that confines the animal during therapeutic treatment and that balances animal confinement with simultaneous access to the animal by the caregiver would not look to Thrun for a cover for a housing. Thrun therefore is not properly cited under In re Oetiker, 24 USPQ2d at 1445. The Thrun device is not directed to a cover for an enclosure or housing used to confine an animal during therapeutic treatment with a syringe or drip bag. Applicant has argued this point previously, including in her appellate brief, and incorporates that argument here.

Even if Thrun were properly citable against the invention as recited in claim 15, Thrun fails to disclose or suggest elements of claim 15.

Assuming for the sake of argument that Thrun recites at least two top panels that hingedly coupled to a housing and that are selectively positionable, Thrun does not disclose first and second top panels that, when in a closed position, cover less than one hundred percent of the top opening, as recited in claim 15. Referring to FIG. 5 of Thrun, the Examiner asserted that the doors cover less than 100 percent of the top opening when in the closed position. According to the Examiner, FIG. 5 of Thrun shows doors 302 covering approximately 50 percent of the opening, the other 50 percent being covered by stationary panel 304.

The Examiner is incorrect. Claim 15 recites a housing that defines a top opening. If there is an immovable panel on the housing, then that immovable panel is not a covering any opening. Rather, it is part of the housing. In other words, it makes no sense for the Examiner to

Appl. No. 09/773,334
Amd dated March 31, 2004
Reply to Office Action of December 31, 2003

refer to an "opening" that is blocked by an element that cannot be opened. It is contradictory to assert that there is both an opening and an immovable element covering the opening. If there is an immovable object in the way, then there is no opening where the immovable object is located.

In the alternative, if the Examiner concludes that the immovable panel is not a part of the housing, then Thrun clearly does not disclose an element of the claimed invention. Claim 15 recites panels that are hingedly coupled to the housing. In Thrun, the doors are hingedly coupled to the stationary panel. Thus, if the stationary panels are not a part of the housing, Applicant's claim 15 clearly does not read on Thrun.

Furthermore, as mentioned above, Thrun specifically teaches the top opening 100 percent closed when the doors are in the closed position.

For at least these reasons, claims 2, 3, 7, 9, 10, 14, and 15 are in condition for allowance.

Clasp Recited in Claim 3

In connection with claim 3, the Examiner asserted that Gullino et al. disclose a securing device, which the Examiner asserted can be defined as a clasp, as it is holding the unit in place by a gripping means. The Examiner's assertion is incorrect. First, the Examiner apparently makes the logical error of asserting that because a clasp is a kind of a securing device, the Gullino securing device is a kind of clasp. This is a non sequitur.

Furthermore, the Examiner's assertion that Gullino et al. disclose a clasp is incorrect and is not supported by the record. Gullino et al. do not disclose a clasp configured to secure a top panel in a closed position, as recited by Applicant's claim 3. Gullino et al. do not state that securing device 20 is a "clasp," nor that it is some sort of generic securing device. On the contrary Gullino et al. specifically identify the element in question as "screw devices" (col. 2, lines 44-46).

Gullino et al. do not disclose a clasp configured to secure a top panel in a closed position, as recited by Applicant's claim 3. Securing device 20 includes screw devices that "firmly anchor the base 12, the wire mesh screen 13, and the four walls 14 together" (col. 2, lines 44-46). Screw devices 20 do not couple to cover 16, and do not secure cover 16 in a closed position. Moreover, cover 16 is not hingedly coupled to a housing and selectively positionable, as required by claim 2

Appl. No. 09/773,334
Amd dated March 31, 2004
Reply to Office Action of December 31, 2003

from which claim 3 depends. The Examiner's reliance upon Gullino et al. for the rejection of claim 3 is was clearly erroneous.

Moreover, claim 3 recites a clasp "configured to secure a top panel in a closed position." The Examiner purports to select a "clasp" from Gullino et al. and a door from Thrun. But there is no evidence—none—that a Gullino screw device can secure a Thrun door in a closed position. Moreover, application of a Gullino screw device to a Thrun door would prevent the Thrun door from operating. Thus, there is no reason one skilled in the art would have been motivated to use a Gullino screw device can secure a Thrun door. For at least these reasons, the Examiner's rejection of claim 3 should be withdrawn.

Claims 9 and 10

For reasons discussed elsewhere in these Remarks, claims 9 and 10 are in condition for allowance.

Grate Covering Window Recited in Claim 6

In the Office Action, the Examiner rejected claim 6 under 35 U.S.C. § 103(a). The grounds asserted by the Examiner are unclear, however. The Examiner asserted that claim 6 is unpatentable over Gullino et al. "in view of Chung as applied to claim 1 above." In the pending Office Action, the Examiner did not apply Chung (U.S. Pat. No. 4,279,361) to claim 1, and apparently no longer asserts Chung against Applicant's invention. The Applicant has previously argued that Chung is not properly asserted against Applicant's invention, and incorporates its arguments here.

Applicant recognizes, however, that the above quoted passing reference to Chung was probably intended by the Examiner to apply to Kissinger et al., and Applicant proceeds with her argument based upon that assumption. Applicant has previously argued that combination of features from Gullino et al. and Kissinger et al. is not supported by the evidence in the record, and that selecting features from the references would not result in the invention as claimed. Applicant incorporates those arguments here, and points out that those arguments are sufficient to support allowance of claim 6.

Appl. No. 09/773,334
Amd dated March 31, 2004
Reply to Office Action of December 31, 2003

In the alternative, Applicant addresses the Examiner's specific grounds for rejecting claim 6. The Examiner rejected claim 6 further in view of Peterson (U.S. Pat. No. 5,988,110). Applicant respectfully traverses the rejection. Peterson fails to disclose or suggest the features recited in claim 6, and provides no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

Claim 6 recites the front panel defining a window, with the apparatus further comprising a grate covering the window. According to the Examiner, Gullino et al. disclose a window 14, but not a grate covering the window. The Examiner further asserted that Peterson teaches a grate. The Examiner stated that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of [Peterson] with the invention of [Gullino et al.] as modified in order to create a cage which would not restrict airflow to the animal."

Once again, there is no evidence—none—supporting a motivation to add a Peterson feature to a Gullino device. Gullino et al. do not disclose a window, but rather disclose a cage made of a clear material such as plexiglass (Gullino col. 2, lines 17-20, Figs. 1-2). Peterson does not disclose a grate on a window, but rather discloses a cage made of rectilinear wire mesh (Gullino col. 2, lines 54-55).

Assuming for the sake of argument that Gullino et al. did disclose a window and that Peterson did disclose a grate, one skilled in the art would not have been motivated to add a Peterson structure to a Gullino device. One skilled in the art would not have been motivated to combine a piece of transparent material such as plexiglass with wire mesh to create a window covered by a grate. Such a combination would not result in the benefit identified by the Examiner, i.e., a cage that would not restrict airflow. Placing a wire mesh on a piece of plexiglass would do nothing to affect the airflow. Aside from being unsupported by the evidence, the Examiner's proposed motivation is absurd on its face. There would have been no motivation for one skilled in the art to take such a pointless action, and Applicant's claimed invention would not result in any event.

For at least these reasons, claim 6 is in condition for allowance. In addition, claim 6 depends on claim 1. As argued elsewhere, claim 1 is allowable, and therefore claim 6 is allowable as well.

Appl. No. 09/773,334
Amd dated March 31, 2004
Reply to Office Action of December 31, 2003

Post and Crook-Shaped Support Recited in Claims 16-19

In the Office Action, the Examiner rejected claims 16-19 under 35 U.S.C. § 103(a) as being unpatentable over Gullino et al. in view of Kissinger et al., and further in view of Carlin (U.S. Pat. No. D 297,471). Applicant respectfully traverses the rejections. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

Claims 16 and 18 recite a post coupled to the housing, the post supporting the syringe cradle. The Examiner asserted that Gullino et al. as modified by Kissinger et al. disclose a housing with a syringe cradle, but the Examiner acknowledged that a post was not disclosed. The Examiner further asserted that Carlin teaches a post. The Examiner reasoned that it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply to teaching of Carlin to the invention of Gullino et al. as modified by Kissinger et al. "in order to provide a secure means of support for the syringe cradle which would also be out of reach for the animal being treated and also for gravity to help the flow of fluid by being in a high position."

Once again, the Examiner has no evidence—none—supporting this conjectural motivation. As argued above, there is no basis in the that one skilled in the art would have been motivated to add Kissinger features to a Gullino device in the first place. There is no evidence—none—that the supposed "syringe" of Gullino et al. could in any way mate with or benefit from combination with the supposed "syringe cradle" of Kissinger et al. And there is no evidence—none—that the Kissinger device could mate with or benefit from the Carlin device. One skilled in the art would not have been motivated to attach a post to a Gullino device to support a syringe cradle the Gullino device neither has nor needs. and is not disclosed with the Kissinger device.

Claims 17 and 19, as amended, recite a drip bag support that is crook-shaped. The Examiner stated that Gullino et al. disclose a fluid container support 34, but acknowledged that the Gullino support is not crook-shaped. The Examiner asserted, however, that Carlin teaches that the support is crook-shaped. The Examiner declared that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Carlin to the invention of [Gullino et al.] as modified in order to hold items in a secure and stable position

Appl. No. 09/773,334
Amd dated March 31, 2004
Reply to Office Action of December 31, 2003

at a high position such that gravity will allow the flow to occur more easily with less risk of any blockages.”

This is another conjectural motivation from the Examiner. It is not evidence.

Also, the supposed motivation is factually suspect. A long flexible fluid tube is more likely to kink and block than the short rigid tube shown protruding from the Gullino water bottle 33. The Examiner has proffered no evidence—none—that the risk of blockage would be reduced.

Claims 17 and 19 have been amended to recite a drip bag support, consistent with amendments to claims 1 and 11. Assuming for the sake of argument that Carlin discloses a drip bag support, there is still no evidence in the record—none—that one skilled in the art would have been motivated to modify the Gullino device by adding a crook-shaped support.

Gullino et al. disclose a water bottle 33 secured with a securing strap 34 (Gullino Col. 3, ll. 32). Because bottle 33 is held by strap 34, adding a crook-shaped support would serve no purpose. Accordingly, one skilled in the art would not have been motivated to add Carlin features to a Gullino device.

Claims 16 and 18 depend on claim 1, as amended, and claims 18 and 19 depend on claim 11, as amended. Because claims 1 and 11 are allowable, claims 16-19 are allowable as well.

Claim 1, Revisited

In the Office Action, the Examiner rejected claim 1 on an alternate ground, asserting that under 35 U.S.C. §103(a) claim 1 was unpatentable over Kissinger et al. (U.S. Pat. No. 5,816,256) in view of Gullino et al. (U.S. Pat. No. 3,897,751). Applicant respectfully traverses the rejection. The applied references fail to disclose or suggest the inventions defined by Applicant's claim, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

In support of the rejection, the Examiner asserted that Kissinger et al. disclose a housing 14 sized to receive an animal and a fluid container support 36 which supports an electrically-activated injection valve 46 and syringe pumps 40, 42, and 44. The Examiner further asserted that the support is coupled to the housing 14 via leads and tubing which enter the animal and attach to the animal, which is coupled to the housing via its feet or body at least. The Examiner

Appl. No. 09/773,334
Amd dated March 31, 2004
Reply to Office Action of December 31, 2003

also stated that Kissinger et al. disclose a syringe cradle, shown in FIG. 1 around syringe pumps 40, 42, and 44, coupled to the fluid container support. The Examiner acknowledged, however, that Kissinger et al. do not specifically disclose that the housing 14 has a front, rear, bottom, and two side panels, as recited by Applicant's claim 1, as amended. The Examiner further stated that Gullino et al. teach such a housing. According to the Examiner, "it would have been obvious to one skilled in the art to have applied the teachings of [Gullino et al.] into the device of [Kissinger et al.] so as to make the animal housing square to make it cheaper to manufacture out of flat pieces of material instead of out of curved pieces which are more expensive. This also allows for easier cleaning, because the flat pieces can be squeegeed more easily."

Many of the points have already been addressed, and Applicant incorporates here the arguments made above on these points. The Examiner's proposed motivation is speculation and is unsupported by the evidence. There is no evidence—none—that a "square" housing is any cheaper than a curved one, or that cleaning with a squeegee is of any motivating concern.

Once again, the Examiner applies an incorrect and unsupported interpretation of "coupled to." Kissinger et al. do not disclose or suggest the "coupled to" element of claim 1.

Once again, the evidence does not support the Examiner's assertion that the unidentified element in Kissinger et al. is a syringe cradle.

Further, claim 1 has been amended to recite a drip bag support, which is coupled to the housing. Neither Kissinger et al. nor Gullino et al. disclose or suggest such an element.

In summary, the Examiner has failed to make a prima facie case of non-patentability for claims 1-3, 6, 7, 9-11, and 14-19. Applicant respectfully requests reconsideration and prompt allowance of these claims.

New Claims:

Applicant has added claims 20-23 to the pending application. The applied references fail to disclose or suggest the inventions defined by Applicant's new claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed inventions. As one example, the references fail to disclose or suggest a support apparatus, as recited by new claims 20, 21 and 23. As another example, the references fail to disclose or suggest an uncovered part of the top opening being sized to permit a handler to touch the animal when top

Appl. No. 09/773,334
Amd dated March 31, 2004
Reply to Office Action of December 31, 2003

panels are in a closed position, as recited by claim 22. No new matter has been added by the new claims.

CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

31 March 2004
SHUMAKER & SIEFFERT, P.A.
8425 Seasons Parkway, Suite 105
St. Paul, Minnesota 55125
Telephone: 651.735.1100
Facsimile: 651.735.1102

By:

Daniel J. Hanson
Name: Daniel J. Hanson
Reg. No.: 46,757